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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

YORK WALLCOVERINGS, INC.,

Plaintiff

v.

**S.A. MAXWELL COMPANY, INC.
and JAIMA BROWN,**

Defendants

CIVIL NO.1:CV-01-0793

**FILED
HARRISBURG, PA**

AUG 14 2002

**MARY E. D'ANDREA, CLERK
PER [Signature] DEPUTY CLERK**

ORDER

Before the court is Defendants' motion pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiff's claims for statutory damages and attorney fees. Plaintiff has responded, but said response is not timely filed. In Defendants' supporting brief, there is a request for the award of counsel fees. Since said request was not a form of relief set forth in Defendants' motion, this relief will not be granted.¹

¹Even if such relief had been requested in the motion, it would not have been granted. Defendants should have filed a motion for sanctions under Federal Rule of Civil Procedure 11(c)(1)(A). Plaintiff would have then been given an opportunity to cure any violation of Federal Rule of Civil Procedure 11(b). Attorney fees as a sanction, at this time, is inappropriate.

Having reviewed the case law and statutes in question, **IT IS HEREBY
ORDERED THAT:**

- 1) Plaintiff's brief in opposition to Defendants' motion to dismiss Plaintiff's claims for statutory damages and attorney fees is deemed untimely filed and not considered.
- 2) Defendants' motion to dismiss Plaintiff's claims for statutory damages and attorney fees is **GRANTED**.



SYLVIA H. RAMBO
United States District Judge

Dated: August 14, 2002.